



LA Legislative Update

Wednesday, July 1, 2009

Louisiana Mid-Continent Oil and Gas Association

LMOGA 2009 Louisiana Legislative Session Summary

Budget analysts, in attempts to determine the final figures on the 2009-2010 state budget, continue to comb through legislation sent to the Governor in a flurry of last minute negotiations late last Thursday, as lawmakers tried their best to ease the pain of budget cuts. Legislators found enough money to restore about half of the proposed cuts to higher education and health care.

There are a few items of certainty upon reflection of the current session:

Louisiana's fiscal status is in critical condition, the current mind-set in this legislature (particularly the House) is business-friendly, higher education and health care survived draconian cuts, yet must brace themselves for surely more to come.

Lastly, the Louisiana Legislature needs a cooling-off period, as major differences surfaced in how to address a dwindling state revenue stream. Current projections are that the problem will only get worse in 2010 and 2011.

The Louisiana Mid-Continent Oil and Gas Association (LMOGA) is pleased to call the recent fiscal session a success for the oil and gas industry. However, we will not sit idly by. Rather, we continue to monitor the state of the global, national and state economies. Our focus is now on what issues to anticipate in the next two years. The 2010 Louisiana Legislature will be a non-fiscal session, a hopeful reprieve from undue tax proposals. However, the year 2011 could very well be a very significant and pivotal year for our industry.

As we all know, our industry is under a full throttle attack in Washington, D.C. As LMOGA monitors the situation through our national associations, contacts and relationships in our nation's capitol, we must remember our industry is always a potential target right here in Louisiana. The 2011 Louisiana Legislature will be the next regular fiscal session, and the state of the state will determine the size of the bull's eye on industry's back. It is too early to know what ominous clouds could roll into Baton Rouge over the next two years, but it's certainly never too early to prepare for even the un-natural storm.

The 2009 Louisiana Legislature is history and our elected-officials are in a well-deserved time out. In the meantime, LMOGA is taking time to provide you with a summary of major bills of interest to our members which passed the Legislature this session.

As you review this legislative session summary, we hope you will notice some of LMOGA's initiatives: the sulfur bill, the oil valuation resolution, LOSCO's fate, fuel provisions, and incentives for natural gas.

Our objectives with the legislative process are to be proactive as well as to have an effective defensive posture. Please take a look at the summary below and let us know if we can provide you with additional information or answer any questions you may have concerning the 2009 Louisiana legislative session.

2009-2010 State of Louisiana Budget Summary:

Operating Budget: \$28.7 billion

\$210 million restored to higher education and healthcare

\$86 million from Rainy Day Fund

\$76 million from an expired insurance fund

\$48 million from one-time sources

Construction Budget: \$5.5 billion capital construction budget

State Revenue: \$1.3 billion decrease (13.6%)

Sales Tax Revenue: \$196 million decrease (6.4%)

Corp. Tax Revenue: \$311 million decrease (35.3%)

Income Tax Revenue: \$312 million decrease (11.0%)

Other Revenue: \$452 million decrease (17.3%)

Prep work for future budget shortfalls:

Created the Commission on Streamlining Government

Created the Constitutional Convention Study Commission to study calling a convention examining our tax base and dedicated revenues

Legislation of note passed by the 2009 Louisiana Legislature

Price Gouging Bills:

SB 272 Heitmeier

HB 617 Talbot:

LMOGA is very pleased to report our countless hours of effort have paid off in two bills sent to the Governor which actually make current price gouging laws more understandable and acceptable to industry. It was not easy, but we went from a Heitmeier “fuel price control bill” to a price gouging bill clarifying current law. The Talbot bill provides a definition of “designated emergency area” and more certainty in the time period for declared states of emergency. It redefines the “designated emergency area” as the specific area, which shall be limited to the actual affected local area or parishes or such areas as designated in an executive order or proclamation of the governor or parish president.

Under the price-gouging portion of the statute, the Talbot bill removes current language instituting the price gouging law “during a named tropical storm or hurricane in or threatening the Gulf of Mexico.” The bill also makes a price gouging prohibition effective for an initial period not to exceed 30 days to be renewed only by specific reference in subsequent proclamations renewing the declared state of emergency by the governor.

Taxes:

Louisiana lawmakers approved well over \$130 million in tax breaks during this past fiscal session. However, Gov. Jindal is expected to veto many of the bills due to the budget shortfall. Below are tax bills LMOGA supported and which have been sent to the Governor's desk.

HB 110 Rep. Jane Smith:

HB 110 increases the individual and corporate income tax credit for the purchase of qualified clean-burning motor vehicle fuel property and for the purchase of a motor vehicle with qualified clean-burning motor vehicle property installed by the vehicle's manufacturer.

HB 215 Rep. Nita Hutter:

This bill establishes the Port of Louisiana investor tax credit and authorizes credits equal to 5 percent of the capital costs of qualifying port and port infrastructure projects. The credit will go to a qualifying project which shall include a project to be sponsored or undertaken by a public port and one or more investing companies that has a capital cost of not less than \$5 million and at which the predominant trade or business activity conducted will constitute port or port and harbor activities.

HB 618 Rep. Hunter Greene:

This bill exempts the first \$150,000 of taxable capital from the corporation franchise tax and eliminates the minimum tax for all corporations. It would go into effect January 1, 2010.

HB 720 Rep. Jane Smith:

The legislature approved HB 720 by Rep. Jane Smith, R-Bossier City, which will allow a tax amnesty program for 2009. The Department of Revenue expects to generate more than \$150 million by encouraging delinquent taxpayers to pay their taxes. The program would create a two-month period during which eligible taxpayers may apply for tax amnesty, provided the taxpayer pays 100 percent of the tax and 50 percent of the accrued interest. The remaining interest and penalties will be waived.

HB 861 Rep. Joe Harrison:

This LMOGA bill was proposed for clarification purposes in the Revenue Department's valuation methodology of oil as it relates to severance tax and transportation cost deductions. The author of the bill, Rep. Joe Harrison, R-Houma, LMOGA and LOGA officials agreed to move the bill into a Study Resolution with the blessing of the Ways and Means Committee. The Study Resolution directs a subcommittee of Ways and Means to further study the issue; receive information and testimony from the Department of Revenue, Department of Natural Resources, LMOGA and LOGA and report to the full committee by October, 2010.

SB 9 Sen. Gerald Long:

SB 9 grants a sales tax exemption from all of the state sales tax and all of the local sales tax for new boats, vessels, or other water craft used as demonstrators. Language was added as a hitchhiker to Sen. Long's bill. The 2008 legislation that passed unintentionally could have allowed imposition of a sales and use tax on the maintenance and repair of historically immovable property in manufacturing. This bill clearly states that tangible personal property should not include, for the purposes of sales and use taxes, any property that would have been considered non-taxable prior to that 2008 act. There was no intention to raise taxes when the legislature passed the earlier act in 2008. LMOGA has been assigned to a working group to assist in developing policy regarding the determination of which items should be considered as moveable or immovable property for the purposes of state and local sales and use tax.

SB 10 Sen. Reggie Dupre:

This bill provides an exception to the imposition of severance taxes due on production within qualified tertiary recovery projects which would otherwise be due once payout has been achieved for production within a carbon dioxide tertiary recovery project which is permitted on or after July 1, 2009. It further provides that for all taxable periods beginning on and after July 1, 2010, the severance tax on future production resulting from within such a tertiary recovery project using anthropogenic carbon dioxide which is permitted after July 1, 2009, shall be reduced by 50% of the tax that otherwise would be due. It provides an incentive for the sequestration of manmade carbon dioxide, while at the same encouraging enhanced oil recovery from “depleted” reservoirs.

SB 194 Sen. Sharon Broome:

This bill authorizes a tax credit against corporate income and corporate franchise taxes for businesses who allow parents to take paid leave for a period not more than seven hours per month during the school year for the purpose of participating in activities directly related to the employee’s child at the school or child day care center attended by the employee’s child. It provides that the credit shall be an amount equal to two and one-half times the employee’s hourly wages per hour of leave granted by the employer.

SB 252 Sen. Mike Walsworth:

SB 252 provides a 5 percent refundable tax credit for capital investment expenditures to modernize an existing facility in its product lines, unit, or entire operations to increase efficiency and productivity by more than 10 percent OR allows the credit if the Louisiana facility is at imminent threat of closure and consolidation with another facility in another U.S. state or country and is in competition for expenditures within the company's portfolio of plants. Louisiana Economic Development (LED), after consulting with the executive director of the Louisiana Workforce Commission and the secretary of the Department of Revenue, may issue the modernization credits if the employer meets the requirements.

SB 268 Sen. Jack Donahue:

This bill will allow taxpayers to put up security in local sales tax cases, rather than having to pay the tax in cash under protest. The bill passed in the final hours. It will provide relief to taxpayers in state tax cases with respect to attorney fee awards that have to be paid by the taxpayer to the tax collector’s attorney (under current law, taxpayers are not awarded attorney fees in cases in which they prevail against the tax collector). SB 268 will generally provide that both parties pay their own respective attorney fees in state tax cases.

Energy Efficient Measures:**HB 733 Rep. Walt Leger:**

HB 733 creates a tax credit for employers who create green jobs, such as those dealing with energy efficiency and renewable energy production.

HB 858 Rep. Erich Ponti:

HB 858 allows developers, contractors and other third parties to claim the 50 percent state solar tax credit, to encourage the incorporation of solar power in new construction or allow one person to buy a solar system from another.

SB 224 Sen. Nick Gautreaux:

SB 224 allows municipalities to create finance zones, issue bonds for energy efficiency and renewable energy projects.

Environmental Issues:

HCR 93 Rep. Karen Peterson:

This House Concurrent Resolution creates the Louisiana Climate Change Policy Commission composed of 20 members including LMOGA. It is charged with evaluating goals or objectives relevant to a comprehensive state policy for climate change, particularly addressing the areas of carbon sequestration; greenhouse gas reduction; and economic development relative to climate change mitigation and environmental improvement and coordination of state and federal policies on climate change. The Commission must submit a report of their work and their findings, along with any recommendations for legislation, to the governor and the appropriate House and Senate Committees prior to the 2010 regular session.

HCR 105 Rep. Gordon Dove:

This bill requests the Department of Natural Resources, with assistance and input from the Department of Wildlife and Fisheries, to study the issue of use of articulated concrete mats to protect underwater exposed or shallow pipelines in the coastal areas. The study is to “determine a pathway to complete the work which has already resulted in a framework for a general permit for use of the concrete mats in the coastal areas.” A report back to the appropriate committees is due by March 1, 2010.

HR 38 Rep. Karen St. Germain:

This House Resolution urges and requests Louisiana Economic Development and the Department of Natural Resources to promote the clean use of alternative feedstock by the petrochemical industry; to benchmark incentives for companies that could use alternative feedstock; and to provide a report with such benchmarks and recommendations to the appropriate committees of the legislature at least two months prior to the opening of the 2010 legislative session. A corresponding **SR 83** by Senate President Joel Chaisson was passed in the Senate.

HB 234 Rep. Gordon Dove:

This bill provides the ability to appeal to the 19th Judicial District Court in Baton Rouge, if denied a permit by the Department of Wildlife and Fisheries authorized under the Natural and Scenic Rivers Act.

HB 539 Rep. Girod Jackson: (ACT 117)

HB 539 is a LMOGA bill which repeals a statutory prohibition on DEQ permitting facilities handling solid sulfur in bulk. It effectively authorizes DEQ to permit solid waste landfills to receive uncontaminated sulfur from refineries if necessary for disposal.

HB 661 Rep. James Morris:

There are three major facets to HB 661: establishment of a comprehensive regulatory program for the control of injection, storage, and use of carbon dioxide under the auspices of the Office of Conservation within the Department of Natural Resources; establishment of liability limits for operators with transfer of liability for storage operations to the Geologic Storage Trust Fund (run by the state) after a specified time; and authority for expropriation of pipeline servitudes, storage facilities and other associated facilities necessary for carbon sequestration operations upon a determination of public convenience and necessity.

HB 833 Rep. Gordon Dove:

HB 833 is a 72-page bill, which for the first time consolidates hurricane flood protection and coastal restoration responsibilities under the newly-created Office of Hurricane Protection and Coastal Restoration.

SB 140 Sen. Neil Riser:

This Louisiana State Police-sponsored bill began as a very bad bill. Thanks to the good work of LCA, it was drastically amended and no longer opposed by industry. As finally passed, the legislation says that any person, who handles, stores or maintains a hazardous material in a “negligent or unreasonable manner without regard for the hazards of the material and causes a significant impact to public health and safety as a result of a reportable release of a hazardous material shall be in violation.” The legislation reduces the civil penalty currently in law from \$25,000 to \$10,000 per violation. The rest of the legislation deals with reimbursements for emergency response.

SB 320 Sen. John Alario:

This administration bill contains a provision transferring the Louisiana Oil Spill Coordinator’s Office (LOSCO) from the Governor’s office to State Police. The Governor’s office initially intended to send LOSCO to DEQ. LMOGA negotiated this language to the satisfaction of all parties concerned.

Workers Comp Reform:**SB 303 Sen. Neil Riser:**

This bill will establish a medical advisory council to assist the state workers compensation director in establishing guidelines for medical treatment of injured workers. The guidelines are to be developed by the fall of next year. It is hoped it will also deliver expedited and improved delivery of medical service to injured workers and lower costs for payers.

Civil Justice Reform:**HB 554 Rep. Nancy Landry:**

This bill provides civil immunity for certain volunteers during a declared state emergency, unless the damage was intentional or caused by a grossly negligent act of the provider. The bill is awaiting action by the governor.

SB 106 Sen. Sherri Smith Cheek:

SB 106 limits the civil liability of any health care provider or personnel during a declared state of emergency who render or fail to render certain health care services during evacuations, repopulations or sheltering of health care provider facilities. A companion bill by Sen. Cheek (SB 107) creates the Uniform Emergency Volunteer Health Practitioners Act.

Constitutional Amendments:

Six proposed changes to the State Constitution passed the Legislature this past session. The election date for the amendments will be Nov. 2, 2010, except for the Riser and Walsworth bills, which will be on the Oct. 2, 2010 ballot.

HB 903 Rep. Jeff Arnold:

This proposed amendment addresses a contentious issue frequently debated in the Legislature. When residential and business properties are reassessed broadly at higher values, the millages, or tax rates, are lowered to keep overall local government revenue at the same level. But local taxing authorities may decide to “roll forward” to the previous higher millage, thereby increasing revenue.

Nonelected bodies—such as appointed boards for fire, levee, recreational and hospital districts—may roll forward also. Arnold and other critics say that amounts to taxation without representation. The amendment, in concert with its companion structure, HB 902, would limit the non-elected authorities to

millage increases of no more than 2.5 percent per year. They could spread out a millage increase over four years, for an eventual increase of 10 percent.

SB 5 Sen. Neil Riser:

This initiative proposes moving up the opening of regular legislative sessions by two weeks. Riser's proposal would move the opening of sessions in even-numbered years from the last Monday in March to the second Monday in March and the start of the sessions in odd-numbered years from the last Monday of April to the second Monday in April. These session dates would not go into effect until 2012.

SB 67 Sen. Joe McPherson:

This proposal would prohibit legislators from raising their own pay, the pay of statewide elected officials and the salaries of members of the Public Service Commission in the same term as the raise is approved. The raises would be effective when a new Legislature and group of statewide officials is sworn in and when a new PSC member takes office.

HB 765 Rep. Rick Gallot:

HB 765 re-addresses how severance taxes on oil and natural gas are divided between the state and parishes. The proposal would increase the amount of severance revenue that would be distributed to the parishes where production occurs. A similar constitutional amendment worded differently failed to pass statewide voters last year.

HB 509 Rep. Walt Leger:

This proposed amendment reduces some of the authority of assessors in the way they conduct property tax sales.

SB 209 Sen. Mike Walsworth:

This ballot initiative would provide that the director, deputy director and employees of the Governor's Office of Homeland Security and Emergency Preparedness will be positioned as unclassified employees according to state civil service law.

Other Bills of Interest which passed in the 2009 Session:

HB 159 Rep. Tim Burns: (ACT 126)

This bill (now law) creates a drilling permit valid for one year with a fee of twice the six-month permit fee. This bill will allow operators to have an extended permit if they would like to have permits last 1 year instead of 6 months.

HB 893 Rep. Tony Ligi:

This bill, in its original form, mandated generators at every fuel service station within one mile of a hurricane evacuation route in the State of Louisiana. LMOGA worked with the author and other officials from Jefferson Parish to amend the bill to require only generator "capability" at new or completely rebuilt fuel service stations in the southern half of the state after October 1, 2009.

HCR 38 Rep. Joe Harrison:

This resolution memorializes Congress to take such actions as are necessary to preserve and maintain the exemption from the Safe Drinking Water Act for hydraulic fracturing.

HCR 47 Rep. Scott Simon:

This resolution memorializes Congress to maintain the current incentives for the exploration and production of domestic oil and natural gas.

Legislation of interest that failed to pass in the 2009 Legislative Session**HB 423 Rep. Eddie Lambert**

HB 423 would have added Ascension Parish to the Louisiana coastal zone. The bill failed in the Senate after a floor amendment would have added Iberville Parish to the CZM Program as well. Senators feared the haphazard and piecemeal growth of the coastal boundary. DNR plans a study of the entire boundary issue in the coming year.

HB 705 Rep. Barbara Norton

HB 705, dubbed the "Equal Pay for Women" bill, escaped the House Labor Committee, but failed to pass the House floor by a vote of 33-59.

HB 745 Rep. Joe Pearson

HB 745 would have authorized the hiring of private tax auditors by local governments on a contingency fee basis. The bill was involuntarily deferred (killed) by the House Ways and Means Committee.

HB 895 Rep. Richard Burford

HB 895 (a substitute for HB 758) was filed at the request of Attorney General Buddy Caldwell and would have authorized the AG to enter into contingency fee contracts with private attorneys to pursue litigation on behalf of the state. The AG cited his dwindling budget as justification for seeking this authority. A strong coalition of business interests, including LMOGA, opposed the measure and it failed to generate enough support to pass the House Judiciary Committee.

SB 1 Sen. Joel Chaisson

SB 1 was an administration bill filed by Senate President Joel Chaisson. The bill would have allowed the governor to utilize up to 10% of constitutionally-dedicated funds for general budget purposes in times of significant fiscal crisis. Current law allows the governor to utilize 5% of these monies in times of fiscal crisis. The Oil Spill Contingency Fund and the Oilfield Site Restoration Fund, both made up entirely of industry generated fees, would have been subject to the measure had it passed. The bill failed to pass as major differences between the House and Senate could not be resolved.

Louisiana Legislature Special Elections: August 1 (Run-off August 29)**House District 40:**

This is a district completely within St. Landry Parish and has attracted a crowded field of 10 candidates. Signed up for the race are George S. Bourgeois Jr., D-Opelousas; Allen Guillory, D-Lawtell; Bradford Jackson, no party-Opelousas; Ronald Lavergne, D-Sunset; Quincy Richard, D-Opelousas; Kelly J. Scott, D-Opelousas; Anna C. Simmons, D-Opelousas; Anthony James Soileau, no party-Washington; "Reggie" Tatum, D-Opelousas; and Ledricka Johnson Thierry, D-Opelousas. Simmons is the former mayor of Opelousas, Richard is a member of the St. Landry Parish School Board, Guillory is a former St. Landry Parish police juror and Tatum sits on the Opelousas Board of Aldermen. Jackson, Thierry and Scott have all made unsuccessful bids for either House District 40 or Senate District 24 in recent years.

The August 1 special election is to fill the seat left vacant by Elbert Guillory, D-Opelousas, who won a May 1 election to replace Don Cravins Jr. in Senate District 24. Cravins had stepped down as state senator to take a job with the U.S. Senate. House District 40 and Senate District 24 have seen little stability since 2004, when longtime District 40 Rep. Charles Hudson, D-Opelousas, died in office. Cravins won the District 40 seat in 2004 and then went on to win Senate District 24 in late 2006, replacing his father, Don Cravins Sr., who left the senate seat to become mayor of Opelousas. Elbert Guillory won the House District 40 seat in early 2007, replacing Cravins Jr. Elbert Guillory won election this year to replace Cravins Jr. in Senate District 24, thus opening up the District 40 seat once again.

Senate District 20:

A third and final candidate signed up Friday for the state Senate race in Terrebonne and Lafourche parishes. State Rep. Damon Baldone, D-Houma, signed his qualification papers after finishing this years legislative session. The qualifying period in which candidates sign up for an election began Wednesday and ended Friday. Another potential candidate, Terrebonne Councilman Clayton Voisin, said he'd decided against running to focus on his role as a senior member of the local governing body.

Along with Baldone, Republican Brent Callais of Cut Off and Democrat Norbert "Norby" Chabert of Little Caillou signed up this week for the Senate District 20 special election scheduled for August 1.

The seat was vacated by Reggie Dupre, D-Bourg, (Chairman of the Senate Natural Resources Committee) who resigned to head up the Terrebonne Conservation and Levee District.